IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CATHERINE D. PECK,	:	APPEAL NO. C-160192 TRIAL NO. A-1501267
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY.*
	:	
THE KROGER CO.,		
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In one assignment of error, plaintiff-appellant Catherine Peck argues that the trial court erred in granting summary judgment to defendant-appellee The Kroger Co. ("Kroger") on Peck's complaint for negligence. Peck's complaint stems from an incident at the Anderson Township Kroger store where Peck tripped and fell over a speed bump in the parking lot directly in front of the store. The speed bump had been painted with yellow, diagonal lines. The trial court granted Kroger's summary-judgment motion, finding that the speed bump was open and obvious, and that Kroger had no further duty to warn Peck of its presence. Peck appeals from that decision, and we review the trial court's summary-judgment ruling de novo. *Esterman v. Speedway LLC*, 1st Dist. Hamilton No. C-140287, 2015-Ohio-659, ¶ 5.

In a negligence action brought by an invitee against a business owner, a business owner owes a duty to its invitees to maintain the premises in a reasonably safe condition; however, a business owner has no common-law duty to warn business invitees against known or open and obvious dangers. *Lang v. Holly Hill Motel*, 122 Ohio St.3d 120, 2009-Ohio-2495, 909 N.E.2d 120; *Robinson v. Bates*, 112 Ohio St.3d 17, 24, 2006-Ohio-6362, 857 N.E.2d 1195. Open and obvious dangers are "not 'hidden, concealed from view, or undiscoverable upon ordinary inspection.' " *Esterman* at ¶ 7, quoting *Thompson v. Ohio State Univ. Physicians, Inc.*, 10th Dist. Franklin No. 10AP-612, 2011-Ohio-2270, ¶ 12.

Peck argues that the speed bump was not readily observable because it was painted the same color and scheme as the designated walkway, which caused Peck to believe that it was a proper walking surface. The video and photographic evidence show that the marked walkway is separated from the speed bump by unmarked pavement, distinguishing the painted speed bump from the surrounding surface and making it readily observable. Thus, we determine that the speed bump was an open and obvious condition as a matter of law, as it was not hidden, concealed from view, or undiscoverable upon ordinary inspection. *See Esterman* at ¶ 7; *Greaney v. Ohio Turnpike Comm.*, 11th Dist. Portage No. 2005-P-0012, 2005-Ohio-5284 (holding that the difference in elevation of a wheelchair ramp was open and obvious as a matter of law where the area had been marked with yellow lines); *compare Crawford v. Sylvania Marketplace Co.*, 6th Dist. Lucas No. L-93-049, 1993 Ohio App. LEXIS 5893, *7 (Dec. 10, 1993) (holding that a speed bump was not open and obvious as a matter of law because it was not painted and was the same color as the surrounding asphalt); *Campbell v. GMS Mgt. Co.*, 9th Dist. Summit No. 16403, 1994 Ohio App. LEXIS 1473,

*5 (March 30, 1994) (holding that an issue of fact existed as to whether a speed bump was open and obvious where it was the same color as the surrounding asphalt).

Therefore, we determine that Kroger owed no further duty to warn customers such as Peck of the speed bump. The entry of summary judgment in favor of Kroger was proper, and we overrule Peck's single assignment of error. The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on August 17, 2016

per order of the court _____.
Presiding Judge